

Calendar No. 637

109TH CONGRESS }
2d Session }

SENATE

{ REPORT
109-347

NUCLEAR RELEASE NOTICE ACT OF 2006

SEPTEMBER 25, 2006.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public
Works, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 2348]

The Committee on Environment and Public Works, to which was referred the bill (S. 2348) to amend the Atomic Energy Act of 1954 to require a licensee to notify the Nuclear Regulatory Commission, and the State and county in which a facility is located, whenever there is an unplanned release of fission products in excess of allowable limits, having considered the same, with an amendment in the nature of a substitute, reports favorably thereon and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

U.S. nuclear power plants release various radioactive materials to the environment, predominately in the form of water and air emissions, during normal operation. Generally, such releases occur under controlled, monitored conditions that meet limits established by the Nuclear Regulatory Commission (the NRC or the Commission) to protect public health and safety.

During the 109th Congress, the NRC identified several instances of unintended, abnormal water releases from nuclear plants containing the radioactive elements tritium and strontium-90. From January 2005 to August 2006, such releases were reported to affect groundwater at operating and decommissioning plants in at least six states: Arizona, California, Connecticut, Illinois, Missouri, and New York. Some reactors experienced several releases over an ex-

tended time period, resulting in tritium concentrations in groundwater at the plant site and in off-site wells. Such releases also raised concern among local governments regarding the need for additional disclosure.

On March 10, 2006, the NRC formed an ad-hoc Liquid Radioactive Release Task Force to review unintended releases of radioactive liquids containing tritium from U.S. commercial nuclear power plants. Pursuant to its charter, this Task Force will review each of these events, identify the cause, evaluate any potential impact on public health and safety, examine the remediation plans of affected nuclear power plants, and report regarding any required actions to the Commission by the end of 2006. On May 9, 2006, the nuclear industry announced a voluntary policy to enhance detection, management and reporting of radiological releases to groundwater that are below federal standards at nuclear power plants.

In the interest of assuring a continued and strengthened federal commitment to disclosure of unintended radiological releases, S. 2348 amends the Atomic Energy Act of 1954 to require a rulemaking on such releases from nuclear power plants. Specifically, this legislation would mandate that the NRC conduct a rulemaking within 2 years of the date of enactment to requiring nuclear plant licensees to notify the governments of the State and county in which the civilian nuclear power facility is located in the event of unintended, abnormal releases to the environment of quantities of fission products or other radioactive substances. This legislation allows the NRC, through its rulemaking process, to work with State and county officials in developing notification procedures that best suit local government information needs.

OBJECTIVES OF THE LEGISLATION

S. 2348 directs the Commission to promulgate regulations, within 2 years of the date of enactment, requiring nuclear plant licensees to notify the governments of the State and county in which a civilian nuclear power facility is located in the event of any release to the environment of quantities of fission products or other radioactive substances. This bill also directs NRC to consider a number of factors in developing the regulations.

LEGISLATIVE HISTORY

On March 1, 2006, the bill was received, read twice and referred to the Senate Committee on Environment and Public Works. The Committee met on September 13, 2006, to consider the bill with an amendment in the nature of a substitute offered by Senators Inhofe, Obama and Jeffords. The Inhofe-Obama-Jeffords amendment was adopted by unanimous consent. S. 2348, as amended, was ordered favorably reported by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This Act may be cited as the “Nuclear Release Notice Act of 2006.”

Sec. 2. Nuclear release notice requirement

This section directs NRC to promulgate regulations, within 2 years of the date of enactment, requiring nuclear plant licensees to notify the governments of the State and county in which the civilian nuclear power facility is located in the event of any release to the environment of quantities of fission products or other radioactive substances.

In the case of unplanned releases that exceed allowable federal limits, the NRC is directed to consider: requiring notice to State and county governments within 24 hours, if such releases aren't already subject to more stringent reporting requirements; and requiring notice when radiation enters into the environment and may cause drinking water sources to exceed a maximum contaminant level established by the U.S. Environmental Protection Agency for radioactive substances under the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

In the case of unplanned releases within allowable federal limits that reach the environment by a path otherwise not allowed or recognized by the plant's operating license, the NRC is directed to consider: any recommendations issued by the Liquid Radioactive Release Lessons Learned Task Force; the frequency and form of notification; and the threshold, volume, and radiation content that trigger notification to State and county governments.

HEARINGS

No committee hearings were held specifically on S. 2348 in the 109th Congress. In response to questions from Senator Obama at the March 9, 2006 Subcommittee on Clean Air, Climate Change and Nuclear Safety Oversight Hearing on the Nuclear Regulatory Commission, the NRC provided additional information on tritium releases at nuclear plants and its view on S. 2348. In addition, during an Oversight Hearing on the Regulatory Processes for New and Existing Nuclear Plants also held by the Subcommittee on Clean Air, Climate Change and Nuclear Safety on June 22, 2006, the Committee received testimony on S. 2348. Witnesses included: Nils J. Diaz, Chairman, U.S. Nuclear Regulatory Commission; Edward McGaffigan, Jr., Commissioner, U.S. Nuclear Regulatory Commission; Jeffrey S. Merrifield, Commissioner, U.S. Nuclear Regulatory Commission; Gregory B. Jaczko, Commissioner, U.S. Nuclear Regulatory Commission; and Peter B. Lyons, Commissioner, U.S. Nuclear Regulatory Commission.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 2348 on September 13, 2006. The bill was amended by an Inhofe-Obama-Jeffords substitute amendment, adopted by unanimous consent. The bill was ordered favorably reported by voice vote. No rollcall votes were taken.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 2348 does not cre-

ate any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 2348 would not impose Federal intergovernmental unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Due to time constraints the Congressional Budget Office estimate was not included in the report when received by the committee, it will appear in the Congressional Record at a later time.

ADDITIONAL VIEWS OF SENATOR BARACK OBAMA

In December 2005, Exelon Nuclear issued a public announcement that tritium-contaminated water had leaked onto the ground at the Braidwood nuclear plant in Will County, Illinois—at least twice—from the pipeline that carries process water into the Kankakee River. Both events had occurred between six and eight years ago, measured up to three million gallons in both instances, and were unknown to the public until the press release last winter. Tritiated water was later discovered to have migrated into at least one drinking well beyond the Braidwood site boundaries.

In addition, leaks were discovered at the Byron nuclear plant in Ogle County, Illinois (at four times the EPA standard) and the Dresden nuclear plant in Grundy County, Illinois. At the Dresden plant, a 2004 test found groundwater tritium levels at 500 times the federal limit and in 2006 at 25 times higher than the EPA safe drinking water level. In March 2006, the State of Illinois filed a lawsuit against Exelon.

Community residents, as well as state and county officials responsible for the safety and health of their constituents, were stunned by these admissions since they had received no notification from Exelon or the Nuclear Regulatory Commission in 1998 or 2000 when these leaks occurred. While Federal law requires state and local officials to be notified immediately upon a “declared emergency” where health and safety are at immediate risk, it does not require State and local officials to be notified of any other accidental, unplanned, or unintentional radioactive substance released into the environment. Those incidents may be documented with the NRC and made available to the public, but accessing that information is contingent upon state and local officials actually knowing that these incidents ever occurred. Moreover, questions remain as to whether Exelon met its requirements for even notifying the NRC of these instances.

The intent of S. 2348, the Nuclear Release Notice Act of 2006, as amended, is to preserve the public right-to-know by ensuring that State and county officials are notified, within a reasonable timeframe, when a nuclear power facility releases unplanned radioactive substances into the environment.

This legislation is not about whether tritium is safe, or at what concentration or level it poses a threat to public safety or health, or whether tritium is present in “Exit” signs, or occurs naturally in granite, or is present in process water released into rivers. This legislation is about ensuring that nearby residents know whether they may have been exposed to any level of radiation generated at a nuclear power plant as a result of an unplanned, accidental, or unintentional incident or occurrence. This legislation is also about determining whether aberrations in the normal operating procedures of a plant—such as leaks, equipment failures, substandard

management practices, or monitoring neglect—are early warning signs of a potential mishap chain that warrants corrective action.

As Congress grapples with how best to meet increases in domestic energy consumption in the coming decades, while addressing the related problems of air quality and carbon emissions, nuclear power must remain an option. The State of Illinois has 11 nuclear power plants—more than any other state in the nation—and those plants generate 50 percent of our state’s energy needs. The future of nuclear power, however, rests on public faith. When that public faith is breached, industry efforts to restore that confidence, especially when those efforts are voluntary, cannot be expected to be sufficient. Congress has an obligation and responsibility to ensure that industry does not again fail the public.

The people of Illinois, and all families who live near nuclear power plants throughout the United States, have the right to know of the release of a radioactive substance into the environment—that previously was not present, and occurred specifically as a result of a failure in the normal operating procedures of a corporation. They have the right to that information within a reasonable timeframe, the right to a third-party review of that information; and the right to reach an independent conclusion as to whether those releases are harmful. This legislation strengthens those rights, and ensures that when radioactive substances are released into the environment outside of normal operating procedures, notifying State and local officials is not a courtesy, or a voluntary action, but henceforth the law.

BARACK OBAMA.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

* * * * *

ATOMIC ENERGY ACT OF 1954

* * * * *

CHAPTER 10. ATOMIC ENERGY LICENSES**SEC. 103. COMMERCIAL LICENSES.**

(a) The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, utilization or production facilities for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of chapter 16 and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act.

(b) The Commission shall issue such licenses on a nonexclusive basis to persons applying therefore (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

(c) Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period.

(d) No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123, or except under the provisions of section 109. No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical

to the common defense and security or to the health and safety of the public.

(e) *NOTICE OF UNPLANNED RELEASE OF RADIOACTIVE SUBSTANCES.*—

(1) *REGULATIONS.*—

(A) *IN GENERAL.*—Not later than 2 years after the date of enactment of the Nuclear Release Notice Act of 2006, the Commission shall promulgate regulations that require civilian nuclear power facilities licensed under this section or section 104 (b) to provide notice of any release to the environment of quantities of fission products or other radioactive substances.

(B) *CONSIDERATIONS.*—In developing the regulations under subparagraph (A), the Commission shall consider requiring licensees of civilian nuclear power facilities to provide notice of the release—

(i) not later than 24 hours after the release;

(ii) to the Commission and the governments of the State and county in which the civilian nuclear power facility is located, if the unplanned release—

(I)(aa) exceeds allowable limits for normal operation established by the Commission; and

(bb) is not subject to more stringent reporting requirements established in existing regulations of the Commission; or

(II)(aa) enters into the environment; and

(bb) may cause drinking water sources to exceed a maximum contaminant level established by the Environmental Protection Agency for fission products or other radioactive substances under the Safe Drinking Water Act (42 U.S.C. 300f et. seq.); and

(iii) to the governments of the State and county in which the civilian nuclear power facility is located if the unplanned release reaches the environment by a path otherwise not allowed or recognized by the operating license of the civilian nuclear power facility and falls within the allowable limits specified in clause (ii), including—

(I) considering any recommendations issued by the Liquid Radioactive Release Lessons-Learned Task Force;

(II) the frequency and form of the notice; and

(III) the threshold, volume, and radiation content that trigger the notice.

(2) *EFFECT.*—Nothing in this subsection provides to any State or county that receives a notice under this subsection regulatory jurisdiction over a licensee of a civilian nuclear power facility.

(f) Each license issued for a utilization facility under this section or section 104b. shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commis-

sion's discretion, constitute grounds for license revocation. In accordance with section 187 of this Act, the Commission shall promptly amend each license for a utilization facility issued under this section or section 104b. which is in effect on the date of enactment of this subsection to include the provisions required under this subsection.

* * * * *

○